

# **EXHIBIT 39**

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
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ANGIE CRUZ, I.H., AR'ES  
5 KPAKA, and RIYA CHRISTIE, on  
6 behalf of themselves and all  
7 others similarly situated,

Plaintiffs,

8  
9 vs. No. 14-CV-4456 (JSR) (GWG)

10 HOWARD ZUCKER, as Commissioner  
11 of the New York State  
12 Department of Health,  
Defendant.

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16 DEPOSITION OF JACK DRESCHER, M.D.  
17 New York, New York  
18 Tuesday, August 11, 2015  
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24 Reported by:  
Diane Buchanan  
25

A P P E A R A N C E S:

THE LEGAL AID SOCIETY

Attorneys for Plaintiffs and Jack

Drescher, M.D.

199 Water Street

New York, New York 10038

BY: BELKYS GARCIA, ESQ.

WILLKIE, FARR & GALLAGHER, LLP

Attorneys for Plaintiffs

787 Seventh Avenue

New York, New York 10019

BY: CHRISTOPHER J. McNAMARA, ESQ.

SYLVIA RIVERA LAW PROJECT

Attorneys for Plaintiffs

147 West 24th Street

New York, New York 10011

BY: MIK KINKEAD, ESQ.

A P P E A R A N C E S :

STATE OF NEW YORK OFFICE OF THE ATTORNEY  
GENERAL ERIC T. SCHNEIDERMAN

Attorneys for Defendant

120 Broadway

New York, New York 10271

BY: JOHN GASIOR, ESQ.

ZOEY S. CHENITZ, ESQ.

1 J. Drescher, M.D.

2 J A C K D R E S C H E R, M.D., called as a  
3 witness, having been duly sworn by a Notary  
4 Public, was examined and testified as  
5 follows:

6 EXAMINATION BY

7 MR. GASIOR:

8 Q. Would you state your name and  
9 address.

10 A. Jack Drescher, M.D., 440 West 24th  
11 Street, New York, New York 10011.

12 Q. Good morning. I'm John Gasior.  
13 I'm an Assistant Attorney General for the  
14 State of New York, counsel for Defendant in  
15 this action.

16 Will you state your name for the  
17 record.

18 A. Jack Drescher.

19 Q. Good morning. Is it Dr. Drescher?

20 A. Yes, Dr. Drescher.

21 Q. Good morning. I'm going to be  
22 asking you a series of questions today  
23 regarding an expert opinion that you offered  
24 in this proceeding. This proceeding is a  
25 case pending in the Southern District of

1 J. Drescher, M.D.

2 to change his appearance and then he  
3 continued to have plastic surgeries. So to  
4 outside observers it was -- looked like he  
5 has relatively bizarre facial skin.

6 Q. So do I understand your testimony  
7 to say that with respect you use the example  
8 of a SIS gender girl wanting a nose job,  
9 would you consider that a vanity-based  
10 desire?

11 A. Often it may be.

12 Q. Can that have a cultural component,  
13 to want that type of vanity-based procedure?

14 A. It could.

15 MR. GARCIA: Object to form.

16 Q. Is that true in the United States,  
17 that people get vanity-based surgeries based  
18 on cultural?

19 A. I am not an expert on why people  
20 get cosmetic surgeries.

21 Q. You use the example of a SIS gender  
22 girl who wanted a nose job. Are transgender  
23 individuals immune to vanity-based desires to  
24 improve their appearance?

25 A. No.

1 J. Drescher, M.D.

2 Q. To the extent that a transgender  
3 individual were to seek out a procedure that  
4 was solely to improve their appearance, would  
5 you consider such a procedure medically  
6 necessary?

7 MR. GARCIA: Object to form.

8 A. I would say that that would be --  
9 you would have to look at that on an  
10 individual basis. You know, it would -- I  
11 have not personally had such a case, so I  
12 don't know what I would do in such a  
13 situation. But I would imagine it would  
14 require the individuals' input from the  
15 treating physicians because they will have  
16 opinions on that.

17 Q. But if the conclusion was that the  
18 transgender person was seeking a cosmetic  
19 procedure simply because they wanted to  
20 improve their appearance, would you consider  
21 that treatment then to be medically  
22 necessary?

23 MR. GARCIA: Object to form.

24 A. I'm not sure I understand the  
25 question.

1 J. Drescher, M.D.

2 Q. Let's assume that you have a  
3 transgender person who has come in and after  
4 an assessment by various treating  
5 professionals, the determination was made  
6 that the reason they wanted a rhinoplasty to  
7 use your example of SIS gender girl who  
8 wanted it for vanity-based reasons, if the  
9 determination was made that the transgender  
10 person wanted the rhinoplastic only to  
11 improve their appearance, but not to treat  
12 gender dysphoria per se.

13 A. If a treatment -- if a treatment  
14 would reduce gender dysphoria, then I would  
15 consider it medically necessary. If the  
16 treatment seemed unrelated to gender  
17 dysphoria, then probably wouldn't be by  
18 insurance terms medically necessary.

19 Q. So would a transgender person who  
20 came in and had gender dysphoria but the  
21 determination was made that the procedure  
22 they were looking for, rhinoplasty or some of  
23 the other procedures listed in the regulation  
24 at 505.2(1), if they were purely to enhance  
25 their appearance, to improve their



1 J. Drescher, M.D.

2 appearance, would you consider that medically  
3 necessary?

4 MR. GARCIA: Object to form.

5 A. Well, again, we are talking  
6 hypotheticals and I think it's more  
7 complicated than that. I think you really  
8 have to be able to, you know, sort out  
9 whether or how much it related to gender  
10 dysphoria or not. And since I have never  
11 seen such a case like that before, I'm  
12 reluctant to say what I would do in that  
13 situation.

14 Q. Is it fair to say that it is  
15 possible as with a SIS gender person, a  
16 transgender person could be motivated to get  
17 a quote/unquote cosmetic procedure for  
18 vanity-based reasons?

19 A. I would say it is possible, but I  
20 think that is not a reason, significant  
21 justification to have to have a blanket for  
22 the procedures without input from treating  
23 practitioners.

24 Q. So your answer to my question is  
25 yes?

1 J. Drescher, M.D.

2 A. It is theoretically possible.

3 Q. For a transgender person to want a  
4 quote/unquote cosmetic procedure? And when I  
5 am talking about cosmetic procedures, the  
6 procedures listed in the regulation at  
7 paragraph 4, Roman V, just using cosmetic  
8 procedure as shorthand.

9 A. We are talking about a rhinoplasty.  
10 I don't think, for example, a male-to-female  
11 transsexual person who wants electrolysis is  
12 simply looking for a vanity-based procedure.

13 Q. But is it beyond possibility that a  
14 transgender person would seek that type of  
15 procedure solely for a vanity-based reason?

16 A. Anything is possible.

17 Q. But is that possible?

18 A. Anything is possible.

19 Q. How does a medical practitioner who  
20 is treating a person with gender dysphoria  
21 differentiate between a patient's  
22 vanity-based desire to improve their  
23 appearance and a procedure that is medically  
24 necessary to alleviate the suffering caused  
25 by gender dysphoria?